UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. S1-4:16 CR 163 RWS
	)	
OSCAR HENRY STEINMETZ,	)	
	)	
Defendant.	)	

NOTICE OF INTENT TO USE INEXTRICABLY INTERTWINED EVIDENCE AND/OR RULE 404(b) EVIDENCE

COMES NOW, the United States of America, by and through Carrie Costantin, Acting United States Attorney for the Eastern District of Missouri, and Robert F. Livergood, Assistant United States Attorney for said District, and files this notice in accordance with Rule 404(b) of the Federal Rules of Criminal Procedure to provide reasonable notice in advance of trial of the general nature of any such evidence it intends to introduce at trial. This case is set for trial on April 3, 2017.

The Government asserts that the evidence listed in this notice is, in fact, intrinsic to the charged offenses and therefore not subject to Rule 404(b). However, from an abundance of caution, the Government notifies the defendant of its intended use of the listed evidence.

I. Introduction

In the instant case, the defendant is charged in Count One with Sexual Exploitation of a Child, in violation of Title 18, United States Code, Section 2251(a) and punishable under Title 18, United States Code, Section 2251(e). The Government intends to introduce testimony concerning defendant engaging in sexual activity with the victim, including taking photos of her.

II. ***Factual Background***

On April 22, 2015, "F" reported to the Maryland Heights Police Department that her step-father, defendant Oscar Steinmetz, repeatedly sexually assaulted her starting when she was around 13 years old. She said that the sexual assaults occurred at their residence in Maryland Heights, Missouri, which is in the Eastern District of Missouri. She said that the abuse started as back rubs. The defendant then started touching her breasts as he played DVDs of anime pornography. Some of the anime pornography was of snakes sexually abusing female characters. The abuse progressed and included the defendant sodomizing her by touching her vagina with his hand and mouth, and having her touch his penis. Sometimes the defendant would go into "F's" bedroom and have her undress. He would kiss her and perform oral sex on her. "F" started to lock her bedroom door, but the defendant used a screw driver to break in.

Defendant would tell "F" that he was checking on "F's" development and would insert his fingers into her vagina. Defendant would also say he needed to check her development and would take digital photos of standing naked. The Government plans introducing some of these photos of "F" standing nude, and of F's breasts and buttocks. Sometimes the defendant would offer cash when he took naked pictures of her. He also had "F" touch his penis.

Sometimes the defendant had "F" put on sexually related clothing and flogged her. Defendant photographed "F" wearing only a leather harness and chains. At another time, defendant had also photographed "F's" mother wearing what appears to be the same leather outfit and chains. In this photo, "F's" mother is also bound, gagged, and blindfolded.

Defendant showed "F" the pictures he had taken of her on the camera's screen. She believes the camera was a Kodak digital camera.

The molestation stopped when "F" was about 16 years old. It was after "F's" mother caught the defendant coming out "F's" bedroom. Defendant was naked at the time.

When she was about 19 years old, "F" moved out of the house.

Det. Kendra Miller of the Maryland Heights Police Department investigated the allegations. On May 1, 2015, Det. House met with the defendant and interviewed him. Defendant gave the police permission to search his house and computer related equipment. During the search, several items were seized including, but not limited to, computers, two Western Digital hard drives (Items 8 and 9), and DVDs of anime. Some of the computers and the DVDs of anime were located in the attic. Located in the basement were dominant/submissive clothing and sex toys.

The computers and computer related equipment were forensically examined by Det. Grimm. On a Western Digital hard drive (Item 8), Det. Grimm located emails that included emails concerning "F's" mother catching defendant coming from "F's" bedroom late at night. The email was dated "01-27-01." Also located on the hard drive were images of "F" nude posing in erotic and pornographic poses. In one of the pictures, "F" was wearing a leather and chain harness.

On another Western Digital hard drive (Item 9), Det. Grimm located in unallocated space on the drive, images of "F" nude, posing in erotic and pornographic poses.

On a Toshiba hard drive (Item 16), Det. Grimm located additional evidence including a folder called "Jailbait" and comic-style images that depicted incest theme drawings.

"F" was later shown the images of her that Det. Grimm located on the hard drives. "F" verified that the images were of her when she was around 13 years old.

III. Rule 404(b)

Rule 404(b) states, in part:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. . . .

Such evidence is admissible if "(1) the evidence is relevant to an issue other than [defendant's] character, (2) it is similar in kind and not overly remote to the crime charged, (3) it is supported by sufficient evidence, and (4) the potential unfair prejudice of the evidence does not substantially outweigh it probative value." *United States v. Anwar*, 428 F.3d 1102, 1110-1111 (8th Cir. 2005) (citation omitted).

Evidence of uncharged criminal conduct is not considered "other crimes" evidence under Rule 404(b) if it arose out of the same transaction or series of transactions as the charged offense, if it is inextricable intertwined with the evidence regarding the charged offense, or if it is necessary to complete the story of the crime on trial. *United States v. Angle,* 234 F.3d 326, 343 (7th Cir. 2000); *see also United States v. Hall,* 604 F.3d 539, 543 (8th Cir. 2010) ("'We have consistently held crimes or acts which are inextricably intertwined with the charged crime are not extrinsic and Rule 404(b) does not apply.' Evidence of other crimes or acts is inextricably intertwined if it is an 'integral part of the immediate context of the crime charged." (citations omitted)).

The evidence that is inextricable intertwined because it is the grooming process that defendant used. He started to massage her and fondled her breasts while he played an anime video of a snake raping girls. He then started to touch her genitals and photograph her to check on her development. He performed oral sex on her and her touch his genitals. This evidence is inextricable intertwined with the evidence in this case, that defendant produced child pornographic images of "F."

In *United States v. Johnson,* 463 F.3d 803, 808 (8th Cir. 2006), the court stated:

> We have held that Rule 404(b), which governs the admission into evidence of wrongful conduct other than the conduct at issue, applies "only to 'extrinsic' and not to 'intrinsic' evidence." United States v. Swinton, 75 F.3d 374, 377 (8th Cir.1996). Evidence of other wrongful conduct is considered intrinsic when it is offered for the purpose of providing the context in which the charged crime occurred. United States v. Forcelle, 86 F.3d 838, 842 (8th Cir.1996). Such evidence is admitted because "the other crime evidence 'completes the story' or provides a 'total picture' of the charged crime."

Id. Here the additional evidence completes the story and provides a total picture of the charged crimes.

If the Court concludes that the evidence is not inextricable intertwined, the evidence would still be admissible under Rule 404(b).

Additionally, Rule 404(b) evidence can be used to prove motive, intent, preparation, plan, knowledge, and absence of mistake or accident. *United States v. Pierson*, 544 F.3d 933, 940 (8th Cir. 2008). Rule 404(b) is a rule of inclusion. *Id.* The Court conducts a Rule 403 balancing test to determine whether the evidence's probative value is substantially outweighed by the danger of unfair prejudice. *Id.*

Here, the evidence of defendant sexually abusing "F," taking photos of her breasts to memorialize her development, showing her anime of a snake raping girls, proves defendant's preparation and plan to commit the crime of Sexual Exploitation of a Child. All of these acts were part of the grooming process that led to him taking sexually explicit photos of "F."

In addition to preparation and planning, evidence is admissible under Rule 404(b) to prove identity. The evidence that defendant photographed of "F's" mother wearing the same leather harness and chains as "F" was photographed in, and that both photos were found on defendant's Western Digital hard drive (Item 8), proves identity: that defendant took the photos of "F."

Identity can also be shown by the anime that defendant collected. Defendant showed the anime to "F" during the course of his molesting her, and anime was also located the Toshiba hard drive (Item 16). The anime is of a sexual nature, including anime of showing larger, older characters sexually molesting smaller, younger looking characters.

IV. Conclusion

For the foregoing reasons, the Government respectfully requests that the Court admit the evidence outlined above because the evidence is intrinsic to the charged offenses, or, in the alternative, pursuant to Rule 404(b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Lucy Liggett,
Assistant Federal Public Defender.

/s/*Robert F. Livergood*
ROBERT F. LIVERGOOD, #35432MO
Assistant United States Attorney